IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Recall Application No. 978 of 2006
In
Criminal Misc. Appl. No. 135 of 2006

Vijay Kumar Singh 37
S/o Mohan Gopal Singh
R/o Prem Nagar,
Police Station Gadar Pur
District – Udham Singh Nagar .....Applicants

Versus

1. State of Uttaranchal
2. Harisaranshanker Srivastav
   S/o Vikramaditya
   R/o Prem Nagar,
   Police Station – Gadarpur
   Distt. Udham Singh Nagar .....Respondents

Sri H.C. Pathak, learned counsel for the applicants.
Shri D.C.S. Rawat, learned counsel for the respondent No. 2.

Hon'ble J. C. S. Rawat, J.

I have heard learned counsel for the applicant as well as learned counsel for the respondent No. 2.

This recall application has been filed by the applicant-respondent No. 2 to recall the order passed by this court on 28th February, 2006 by which the cognizance order was quashed and parties were directed to appear before the learned Magistrate and the Magistrate was also directed to dispose of the case in accordance with law in the light of the observation made in the judgment. It was further observed at the time of the disposal of this petition that the learned Magistrate had not discussed the entire evidence which was available on record. It was further observed that the Magistrate had taken the cognizance on the affidavit filed before him in the final report by the complainant. I have heard learned counsel for the applicants in the original petition and it was contended that the learned Magistrate had considered the entire document place before him. The order of the learned Magistrate clearly reveals that he had considered the affidavit of the complainant and his witnesses. The

learned Magistrate had the following options when the chargesheet is filed before the court :-

i. He should reject the final report on the basis of the evidence available on the record.

ii. He should proceed with the protest petition as a complaint case and proceed u/s 200 and 202 Cr.P.C.

iii. He should have an option to accept the final report.

There is no other procedure as indicated above. The learned Magistrate had no power to consider the affidavits of the complainant as well as of his witnesses while taking the cognizance against the accused. It was further admitted by the learned counsel for the applicant that the Magistrate cannot take into account the said affidavit. It was contended that the learned Magistrate had only mentioned at the conclusion that he had considered the papers filed by the complainant. Perusal of the entire body of the judgment clearly reveals that the papers which were said in the operating portion, pertains to the affidavit filed by the complainant. It is admitted that the affidavit cannot be taken into consideration while taking the cognizance and rejecting the F.I.R. I heard the applicants on merit. After hearing him, the conclusion taken by this court does not require any interference. As such, there is no purpose to allow the application.

In view of the above position of law, I do not find any mistake apparent on the fact of it. Even then, I have heard Sri D.C.S. Rawat, learned counsel for the respondent No. 2 at length. I do not find any patent illegality in the order passed by this court on 28th February, 2006. There is no use to rehear the petition. I have already heard the parties on merit today and I do not find any force in the contention of the present applicant.

In view of the above, the recall application is devoid of merit is liable to be dismissed and is dismissed accordingly.

(J. C. S. Rawat, J.)

26th June, 2006
Shiv